

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

IZCRA E. VILLA-BOJORQUEZ,

Defendant.

CASE NO. 8:05CR158

TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) in this case and the Defendant’s motion for downward departure (Filing No. 24). The parties have both adopted the PSR (Filing Nos. 22, 23). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The motion for downward departure addresses several issues: cultural assimilation; family and community ties; over representation of the Defendant's criminal history; status as a deportable alien; and the totality of the circumstances. The motion is supported by a brief (Filing No. 24.) The Court has also considered the government's response to the motion (Filing No. 25).

The Eighth Circuit has foreclosed any argument with respect to the issue of the Defendant's status as a deportable alien. When one has been convicted of illegal reentry, her deportable alien status has already been considered by the sentencing commission in establishing the appropriate sentencing guideline range. *United States v. Vasquez-Resendiz*, 24 Fed. Appx. 633, 633 (8th Cir. 2001) (citing *United States v. Cardoso-Rodriguez*, 241 F.3d 613, 614 (8th Cir. 2001)).

At sentencing, the Court will hear the motion for downward departure, insofar as the motion addresses other issues.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the Presentence Investigation Report is correct in all respects;

2. The Defendant's motion for downward departure will be heard with respect to all issues raised except the issue of the Defendant's status as a deportable alien;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 25th day of August, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge